



## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 269**

**[Docket ID: DOD-2016-OS-0045]**

**RIN 0790-AL58**

### **Civil Monetary Penalty Inflation Adjustment**

**AGENCY:** Office of the Under Secretary of Defense (Comptroller), Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The DoD is issuing this final rule to adjust each of its statutory civil monetary penalties (CMP) to account for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 and for each year thereafter.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Dzenana Dzanic, 703-508-9277.

### **SUPPLEMENTARY INFORMATION:**

#### **Background Information**

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, codified at 28 U.S.C. 2461, note, as amended, requires agencies to annually adjust the level of CMPs for inflation to improve their effectiveness and maintain their deterrent effect. Section 2461 requires that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment set forth therein. The inflation adjustment is determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of \$1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment exceeds the CPI for the month of October in the previous calendar year.

The initial catch up adjustments for inflation to the DoD's CMPs were published as an interim final rule in the **Federal Register** on May 26, 2016 (81 FR 33389-33391) and became effective on that date. The interim final rule was published as a final rule without change on September 12, 2016 (81 FR 62629-62631), effective that date. The revised methodology for agencies for 2017 and each year thereafter provides for the improvement of the effectiveness of CMPs to maintain their deterrent effect. The DoD is adjusting the level of all civil monetary penalties under its jurisdiction by the Office of Management and Budget (OMB) directed cost-of-living adjustment multiplier for 2023 of 1.07745 prescribed in OMB Memorandum M-23-05, “Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.” The DoD's 2023 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the DoD after the effective date of the new CMP level.

## **Statement of Authority and Costs and Benefits**

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 2461) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding 5 U.S.C. 553. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is established in statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The DoD is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity to comment are not required for this rule. For the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

Further, there are no significant costs associated with the regulatory revisions that would impose any mandates on the DoD, Federal, State or local governments, or the private sector. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. The benefit of this rule is the DoD anticipates that civil monetary penalty collections may increase in the future due to new penalty authorities and other changes in this rule. However, it is difficult to accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

## **Regulatory Procedures**

**Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

These Executive Orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). These Executive Orders also emphasize the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated "not significant", under section 3(f) of Executive Order 12866. Accordingly, this rule has not been reviewed by the OMB under these Executive Orders.

#### **Congressional Review Act, 5 U.S.C. 804(2)**

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the Federal Register, whichever is later. This rule is not a major rule, as defined by 5 U.S.C. 804(2).

#### **Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule the mandates of which require spending in any year of \$100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

#### **Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)**

The Under Secretary of Defense (Comptroller) certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if

promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

**Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

The Paperwork Reduction Act was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons resulting from the collection of information by or for the Federal government. The Act requires agencies obtain approval from the OMB before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

**Executive Order 13132, “Federalism”**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

**Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”**

It has been determined that this rule will not have a substantial effect on Indian tribal governments. This rule does not impose substantial direct compliance costs on one or more Indian tribes, preempt tribal law, or effect the distribution of power and responsibilities between the Federal government and Indian tribes.

**List of Subjects in 32 CFR Part 269**

Administrative practice and procedure, Penalties.

Accordingly, 32 CFR part 269 is amended as follows.

**PART 269—[AMENDED]**

1. The authority citation for 32 CFR part 269 continues to read as follows:

Authority: 28 U.S.C. 2461 note.

2. In § 269.4, revise paragraph (d) to read as follows:

**§269.4 Cost of living adjustments of civil monetary penalties.**

\* \* \* \* \*

(d) *Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Department are adjusted for inflation as follows:

**Table 1 to paragraph (d)**

United States Code	Civil Monetary Penalty Description	Maximum Penalty Amount as of 2022 (\$)	New Adjusted Maximum Penalty Amount (\$)
National Defense Authorization Act for FY 2005, 10 U.S.C 113, note	Unauthorized Activities Directed at or Possession of Sunken Military Craft	144,887	156,108
10 U.S.C. 1094(c)(1)	Unlawful Provision of Health Care	12,722	13,707
10 U.S.C. 1102(k)	Wrongful Disclosure—Medical Records:		
	First Offense	7,523	8,106
	Subsequent Offense	50,152	54,036
10 U.S.C. 2674(c)(2)	Violation of the Pentagon Reservation Operation and Parking of Motor Vehicles Rules and Regulations	2,073	2,234
31 U.S.C. 3802(a)(1)	Violation Involving False Claim	12,537	13,508
31 U.S.C. 3802(a)(2)	Violation Involving False Statement	12,537	13,508
42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(1)	False claims	22,426	24,163

42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(1)	Claims submitted with a false certification of physician license	22,426	24,163
42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(2)	Claims presented by excluded party	22,426	24,163
42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(2); (b)(2)(ii)	Employing or contracting with an excluded individual	22,426	24,163
42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(1)	Pattern of claims for medically unnecessary services/supplies	22,426	24,163
42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(2)	Ordering or prescribing while excluded	22,426	24,163
42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(5)	Known retention of an overpayment	22,426	24,163
42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(4)	Making or using a false record or statement that is material to a false or fraudulent claim	112,131	120,816
42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(6)	Failure to grant timely access to OIG for audits, investigations, evaluations, or other statutory functions of OIG	33,640	36,245
42 U.S.C. 1320a-7a(a); 32 CFR 200.210(a)(3)	Making false statements, omissions, misrepresentations in an enrollment application	112,131	120,816
42 U.S.C. 1320a-7a(a); 32 CFR 200.310(a)	Unlawfully offering, paying, soliciting, or receiving remuneration to induce or in return for the referral of business in violation of 1128B(b) of the Social Security Act	112,131	120,816

Dated: January 10, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.

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